

**IN THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUVALLUR AT POONAMALLEE**

**PRESENT: Thiru.S.Murugesan, M.Sc., B.L.,
II Additional District and Sessions Judge,
Tiruvallur at Poonamallee**

On this Tuesday the 13th day of February 2024

R.L.T.A. No.5/2023

1. Mrs. Padma Nallathambi

Wife of late Mr. M. Nallathambi

2. Mr. N. Vettrivel

Son of late Mr. M. Nallathambi.

Both residing at No.5-B/2,

Blue Beach Road, Neelankarai,

Chennai - 600 115.

... Appellants

Vs

M/s. Muthuramman and Co,

Represented by its Sole Proprietor Mr. P. Sivakumar,

No.240/5, Nagathamman Nagar,

Nemilicherry, Thirunindravur – 602 024

And also at No.14/38, Matruvazhi Salai (Bye-Pass Road)

Ariyamanthanallur Village,

Poonamallee Municipality,

Poonamallee, Chennai – 600 056.

...Respondent.

This appeal suit is filed by the appellants against the order and decretal order passed by the Principal District Munsif Cum Rent Court, Poonamallee in R.L.T.O.P No.8/2021, dated 19.01.2023.

Parties in the Lower court

Between:-

1. Padma Nallathambi
2. N. Vettrivel

... Applicants

Vs

M/s. Muthuramman and Co.,

Represented by its Sole Proprietor P. Sivakumar

... Respondent

This appeal suit was coming up for final hearing before me on 03.01.2024 in the presence of M/s. M.V. Seshachari and R.S. Bharanivel Raaj, Advocates for appellants and respondent not appeared before this court inspite of notice and respondent side is deemed to be heard and on hearing the appellants side arguments and perused the lower court records and having stood over till this day for consideration this Court passed the following :

JUDGMENT

This appeal suit is filed by the appellant against the order and decretal order passed by the Principal District Munsif Cum Rent Court, Poonamallee in

R.L.T.O.P No.8/2021, dated 19.01.2023.

2. The averments of petition filed by the Appellants before the trial court in brief are as follows :

The petition filed under section 21(2)(a), 21(2)(b) of the Tamilnadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 r/w rule 10 of Tamilnadu Regulation of Rights and Responsibilities of Lands and Tenant Rules, 2019, for eviction of respondent from the petition premises by directing the respondent to quit and deliver vacant possession of the petition premises to the applicants and costs of the petition.

3. The applicants claimed that the petition premises to a larger extent of 5 cents was purchased by 2nd applicant vide Sale Deed dated 19.08.1984. The property in S.F. No.47/1 to an extent of 20 cents is situated at Ariyamandhanallur village and it was in possession of 1st applicant's husband, and 2nd applicant's father one Nallathambi. The said Nallathambi constructed petition premises in the petition property as well as in the adjacent temple premises.

4. While being so, the Highway Department has acquired 25 sq.mtr. out of 5 cents for road expansion in the year 2006. As per direction in W.P. No.34168/2016 of Hon'ble High Court of Madras by order dated

28.12.2017, the 2nd applicant surrendered the temple property to the temple authorities and they erected fencing around the same.

5. The said Nallathambi has rented out the petition premises and the adjacent temple premises to the respondent during the year 2013 for the monthly rent of Rs.38,500/- the respondent paid a sum of Rs.2,00,000/- towards advance. The respondent through his wife Shanmugadevi has come forward to purchase the petition premises and thus a sale agreement dated 21.12.2017 was entered with them by the petitioners. The respondent paid an advance amount of Rs.2,00,000/- out of total sale consideration of Rs.50,00,000/- as advance. The respondent's wife Shanmugadevi is liable to pay the balance consideration within a period of two years.

6. The respondent by taking advantage of the sale agreement dated 21.12.2017 he has not paid rent from January 2019 from the date of entering into sale agreement on 21.12.2017, the tenancy relationship between the applicants and respondent came to an end. The applicant issued a legal noticed dated 01.09.2020 to the respondent and his wife by calling upon them to pay the arrears of rent and vacate the petition mentioned property. The respondent wife issued a reply notice dated 18.09.2020 with false and baseless allegation and for that the applicant issued rejoinder notice on 13.10.2020. Hence, the applicants

sought for eviction of respondent from the petition premises on the ground of willful default in paying rent to the tune of Rs.7,60,000/-.

7. Averments of the Counter filed by the Respondent are in brief :

The respondent denied the contention of petition as false except those that are specifically admitted by him. The respondent claimed that he was entered into a lease agreement on 01.07.2013 for the property measuring 11872 sq.ft. The respondent spent an amount of Rs.6,00,000/- towards renovation of the demised premises. The respondent later came to know that 5 cents alone purchased by 1st applicant husband Nallathambi and temple authority issued notice to the respondent for the land belonged to them. The National Highways Department of India also acquired 1 1/2 cents of patta land belonging to Nallathambi. Due to the acquisition process by Devasthanam a loss to the tune of Rs.5,00,000/- incurred by the respondent.

8. The petitioner in order to meet out their family requirements have agreed to sell the land to the respondent herein for the sale consideration of Rs.10,00,000/- and entered into a Sale Agreement on 21.12.2017. The respondent paid an advance amount of Rs.2,00,000/- and Rs.3,40,000/- later for the sale consideration. The petitioners did not come forward to execute Sale Deed in favour of respondent and the respondent came to know about the mortgage of petition property by the applicants with Sangagiri Lorry Transport

Association. When the respondent enquired about the same, the applicants neglected to answer.

9. The respondent reserved his right to file a suit for Specific Performance to execute Sale Deed as per Sale Agreement dated 21.12.2017. The respondent has not committed any arrears of rent and the petitioners are bound to clear the mortgage and execute sale deed in favour of the respondent. Therefore, the respondent sought for dismissal of this petition with costs.

10. The learned trial Judge on the basis of the above pleadings, framed issues.

1) Whether the petitioners are entitled for the relief of eviction of respondent from petition premises as prayed for ?

11. On the side of the Petitioner, PW.1 was examined and Ex.P.1 to Ex.P.9 were marked. On the side of the Respondent, RW.1 was examined and no documents were marked. Upon consideration of the evidence, the trial court dismissed the petition. Aggrieved the order passed by the learned trial court, the petitioner preferred this appeal with the following grounds :

12. **Grounds of appeal :**

The Learned Rent Court ought to have seen that the respondent had

become a tenant during the year 2013. The Learned Rent Court ought to have seen that the 1st Appellant had entered into a Renewal Agreement dated 01.08.2015 with the Respondent. As per the terms of the Renewal Agreement dated 01.08.2015, the Respondent has to pay monthly Rent of Rs.40,000/- (Rupees Forty Thousand only) to the Appellants. Further, the lease duration was fixed for two years and the same also lapsed on 31.07.2017. The Learned Rent Court ought to have seen that the Respondent's wife had entered into an Agreement for Sale dated 21.12.2017 to purchase the petition premises for a total Sale consideration of Rs.50,00,000/- (Rupees Fifty Lakhs Only) and had requested to treat the advance of Rs.2,00,000/- paid towards Rental Agreement as advance for the same.

13. The Learned Rent Court ought to have seen that though the Sale Agreement dated 21.12.2017 was entered with the Respondent's Wife, the same has not put to an end in tenancy relationship between the Appellants and the 1st Respondent. The Learned Rent Court ought to have seen that the Respondent had continued to pay monthly rent even subsequent to the Sale Agreement dated 21.12.2017 and he had defaulted in the payment of rent from January 2019 onwards. The Learned Rent Court had erred in holding that the appellants have not sought for relief under Section 21(2)(a) of the Act. In this regard, the Learned Rent Court ought to have seen that in the details of application at

Paragraph No.1 while mentioning the grounds on which the eviction was sought for, it was specifically mentioned that eviction was sought for on the ground of violation of Section 4(2) read with the Section 21(2)(a) of the Act – continuing to be in occupation of the petition premises without written Rental Agreement.

14. The Learned Rent Court ought to have seen that in Paragraph No.3L, the appellants have specifically stated that the Rental Agreement dated 01.08.2015 entered between the 1st Appellant and Respondent had lapsed on 30.07.2017 and that the Respondent has got no right to occupy the schedule mentioned property in the absence of written Rental Agreement.

15. The Learned Rent Court ought to have considered the specific ground and averments regarding Section 21(2)(a) of the Act and ought to have ordered eviction on the said ground.

16. The Learned Rent Court erred in holding that appellants are not entitled to invoke Section 21(2)(b) of the Act in the absence of written Rental Agreement. The Learned Rent Court ought to have considered the categorical admission made by the Respondent / RW1 at the time of Cross-Examination that he has not paid Rent to the Appellants from January 2019 onwards. Therefore the appellants prays to allow the appeal by setting aside the fair order and decretal order dated 19.01.2023 in R.L.T.O.P. No.8 of 2021 on the file of the

Learned Principal District Munsif Cum Rent Court at Poonamallee and to allow the said O.P. with cost.

17. The point for consideration in this appeal is whether the appeal is to be allowed or not ?

18. POINT :

The learned counsel for the appellant Shri. M.V. Seshachari contended that the appellant is the Landlord who rented out the property to the Respondent. The first appellant is the mother and the 2nd appellant viz. Thiru. Nallathambi originally owned the demised property. The property purchased by the Nallathambi and in addition to that he had taken out some of the property from the temple. He rented out the patta land as well as the temple land to the Respondent / Tenant. The temple authority filed a writ petition and since assigned the temple property was surrendered by the Respondent / Tenant to the Landlord who in turn surrendered the same to the portion acquired by the Government for formation of the road and remaining 150 sq. meter allotted to the deceased Nallathambi. This property is the subject matter of the appeal. There was a rental agreement between the appellant and Tenant in the year 2015 itself and it has not subsequently renewed for two years and subsequently not renewed in the year 2017. The respondent / wife entered into sale agreement with the Appellant to purchase the demised premises. According to the learned counsel for the appellant the rent was fixed at the rate of Rs.38,500/- per month. But

however it was denied by the Respondent during the cross examination in the trial court that the rent was fixed for Rs.18,500/- only. The respondent has continued to pay the rent till February 2019. The tenancy is admitted. The main ground taken by the respondent that since she entered into sale agreement under Ex.P.9 to purchase the property, it does not require to pay any rent any more. It is further contended by the learned counsel for the appellant is that even before the moving the eviction petition against the respondent, the appellant has issued a legal notice to terminate the tenancy under Ex.P.3 under which the respondent replied under Ex.P.4. A suitable rejoinder has issued by the appellant under Ex.P.5. Thereafter only he moved the Rent Court to evict the respondent from the premises. While filing the Eviction Petition the caption has given as 4(2) 22(a). The substances of particular section adumbrated 26(a) and (b) was categorically pleaded in the petition as to why the appellant is seeking the eviction of the respondent. It is further contention of the learned counsel for the appellant that the trial court has failed to appreciate that there is no rented agreement existed on the date of filing of the eviction petition as contemplated u/s.4(2) r/w 22(1)(2A).

19. He further invited the attention of this court in para 4 and 5 of the appeal grounds he categorically pleaded the grounds for eviction which is sought for against the Respondent. But however the learned Rent Court gone out of his sight and dismissed the Eviction Petition which is necessitated to file this

appeal to reverse the order of the Rent Court.

20. As far as the Respondent is concerned, even during cross examination has categorically admitted that there is no specific clause found in Ex.P.9 with regard to the payment or non-payment of the rent. Therefore, the appellant has never made any covenant with respect to the receipt of the rent with Respondent. In the absence of a specific clause for non-payment of rent it is the duty to cause upon the respondent to pay the rent continuously. However from March 2019 onwards till the date of filing of the Eviction Petition the respondent failed to pay the rent which covered under the default clause. Therefore, the respondent has committed in default in paying the rent. Even in the reply notice Ex.P.4, the Respondent has stated that since she entered into agreement to purchase the demised property and therefore he need not pay the rent. The said contention cannot be countenanced since the title has not been conveyed. Moreover, the document also not registered in the name of the Respondent. It is to be appreciated unless or otherwise a full amount paid by the purchaser and get the sale deed registered in his favour, even though the purchaser is in the possession of the land, it cannot be construed that the title has been conveyed. In other words, unless the sale deed is registered, no title is passed against the purchaser. So, mere entering into a sale agreement though he was tenant, unless a specific clause in the agreement, the respondent cannot be permitted to default in paying the rent.

21. The main contention of the learned counsel for the appellant is that the trial court was not considered about the pleadings specifically pleaded as to what purpose the RLTOP was filed. More particularly, when the petitioner mentioned in the petition that the respondent violated sec.4(2) r/w 21(2) (a) Act 2017 and 21(2)(b) of the TNRRRL& T Act. The trial court in its judgment in para 7.6 has stated

“ The applicants mentioned about section 21(2)(a) in the docket and in the front page of application whereas in the petition he has not sought for eviction of respondent for not entering into a registered written agreement as per section 21(2)(a) of the Act. Since there is no specific averments and relief claimed as to section 21(2)(a) of Act, this Court cannot order for eviction under that provision.”

22. The petition averments carefully perused. Though a specific averments were pleaded in the petition, it went out of sight in the trial court. The appellant has specifically pleaded as to what purpose he is seeking eviction. The only ground that as per sec.4(2) of the said Act, there was no agreement entered into between the Landlord and Tenant. The appellant issued a eviction notice to the respondent under Ex.P.3. The said legal notice contemplated u/s.21(2)(b) of the Act and also u/s. 106 of T.P. Act. In the mean time, the respondent has entered into sale agreement in respect of the property under Ex.P.9 wherein

nothing mentioned about the payment of rent. The sale agreement was entered into between the respondent's wife and appellant on 21.12.2017. In the cross examination the respondent has categorically admitted that

ம.சா.ஆ.9 ஒப்பந்தத்தில் மனுதாரரிடம் எனக்கும் உள்ள உரிமையாளர் வாடகைதாரர் என்ற நிலையில் ரத்து செய்யவில்லை என்றால் ஆமாம்.
 நான் டிசம்பர் 2018ல் மனுதாரரிடம் வாடகை செலுத்தி வந்தேன் என்றால் பிப்ரவரி மாதம் 2019 வரை வாடகை செலுத்தி வந்தேன்.

23. From the above evidence it is clear that the Landlord, Tenant relationship between the appellant and the respondent has not been terminated. On perusal of evidence of RW.1, it is seen that so far she has not initiated any legal steps to enforce the sale agreement. It is pertinent to note that there is no clause available in the sale agreement Ex.P.9 that in view of the sale agreement, the Respondent, though occupied the demised premises need not pay any rent till the execution of the sale deed. The sale is yet to be completed and the appellant continuous to be the owner of the property. It is well settled law that unless and until the sale deed is executed, the title cannot be transferred. RW.1 admitted in the cross examination that right from February 2019 she has not paid any rent. This shows that there is willful default on the part of the respondent. The appellant has clearly mentioned about the reason for eviction and brought in the pleadings categorically. Much less he has mentioned for what purpose he is

seeking for eviction u/s. Sec. 4(2) r/w 21(2)(a) of the TNRRR L & T Act. The Ex.P.3 was issued mainly on this ground also. In any event, with regard to the willful default the appellant failed to prove the same by means of any clinching evidence but he has proved that there existing a landlord and tenancy relationship. The learned trial court ought to have appreciated the relief sought for by the appellant at the first instance because the reason for eviction and seeking the premises was pleaded by Appellant.

24. Mere sale agreement for the schedule mentioned property shall not give any rights to the respondent to continue to be in the demised premises as a tenant without entering into the agreement as contemplated u/s.4(2) r/w 21(2)(a) of the 2017 TNRRR L & T Act. The newly enacted rental law, stipulated the importance of the rental agreement. It has been made compulsory. If no agreement with respect to tenancy, the landlord can seek for eviction on this sole ground. There is no tenancy agreement entered into between the Appellant and respondent even though there is a Landlord and Tenant relationship exists. Therefore, the respondent is ordered to be evicted from the premises. As far as the 2nd prayer u/s.21(2)(b) is concerned this appeal is dismissed since the rental agreement entered into between the appellant and respondent was lapsed prior to the introduction of the present TNRRRL&T Act. In view of the above said finding, this appeal is allowed with cost. Time for

eviction two months.

In the result, this appeal is allowed with cost and the order and decreetal order passed in R.L.T.O.P. No. 8 /2021 dated 19.01.2023 by the leaned trial court is set aside and the Respondent / Respondent is hereby directed to handover the petition mentioned premises to the Appellant / Petitioner. Time for eviction two months.

Dictated to steno-typist, directly typed by him, corrected and pronounced by me in Open Court this the 13th day of February 2024.

II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.

Copy to:
The Principal District Munsif
cum Rent Court,
Poonamallee.

Draft /Fair Judgment
RLTA.No.5 of 2023
Date : 13.2.2024
II A.D.C., Poonamallee.